

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

KEIRON TELEFARO HELMS,

Defendant and Respondent.

E063889

(Super.Ct.No. RIF147691)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.
Reversed.

Michael A. Hestrin, District Attorney, and Emily R. Hanks, Deputy District
Attorney, for Plaintiff and Appellant.

Susan K. Shaler for Defendant and Respondent.

INTRODUCTION

The People appeal from the trial court's grant of defendant's petition under Proposition 47 and Penal Code section 1170.18¹ to reclassify his felony convictions of second degree burglary (§ 459) and forgery (§ 475, subd. (c)) as misdemeanors. The People contend that defendant failed to meet his burden of establishing that his convictions qualified for reclassification, and his convictions remained felonies even post-Proposition 47. We reverse.

FACTS AND PROCEDURAL BACKGROUND

On December 26, 2008, defendant was charged in a complaint with second degree burglary (§ 459; count 1), check forgery (§ 475, subd. (c); count 2), and with the allegations that he had suffered two prison priors (§ 667.5, subd. (b)). Specifically, the complaint alleged as to count 1 that defendant entered a bank on July 19, 2008, "with intent to commit theft and a felony" and as to count 2 that he "did willfully and unlawfully possess a completed check . . . with the intent to utter and pass and facilitate the utterance and passage of the same, in order to defraud DAVID H. RICKS and WELLS FARGO BANK."²

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² In a declaration in support of an arrest warrant filed on December 26, 2008, a deputy sheriff stated that a bank manager reported that on July 19, 2008, defendant entered the bank and attempted to cash a fraudulent check in the amount of \$2,650. A bank cashier contacted the company whose name appeared on the check and determined that the check was forged. Defendant left the bank, leaving behind the forged check and his identification. Defendant challenges the use of the declaration as hearsay. We need not
[footnote continued on next page]

On July 24, 2009, defendant entered a plea of guilty as to both charges and admitted the prison priors. As the factual basis for his plea, he affirmed in court that he entered the bank with the intent to commit theft or a felony, and that he unlawfully possessed a completed check with the intent to pass the check and defraud an individual and the bank, as alleged in counts 1 and 2. The court determined that the factual basis for the plea was adequate. The minute order for the plea hearing states that the factual basis for the plea was “COM-Complaint.” Defendant was sentenced to one year four months in state prison, concurrent to his sentence in another case not at issue in this appeal.

On February 10, 2015, defendant filed a petition under section 1170.18, to have his felony conviction of second degree burglary redesignated as a misdemeanor. In his petition, he asserted the value of the check did not exceed \$950. Over the People’s objection that a bank is not a commercial establishment, the trial court redesignated his conviction of count 1 as misdemeanor shoplifting (§ 459.5) and his conviction of count 2 as misdemeanor forgery (§ 475, subd. (c)).

DISCUSSION

Proposition 47 and Statutory Amendments

On November 4, 2014, voters approved Proposition 47, the Safe Neighborhoods and Schools Act, which went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 reduced certain drug- and theft-related crimes

[footnote continued from previous page]

[footnote continued from previous page]

address the issue because, as we discuss *post*, defendant bore the burden of establishing his eligibility for resentencing but failed to meet that burden.

from felonies or wobblers to misdemeanors for qualified defendants and added, among other statutory provisions, section 1170.18. Section 1170.18 creates a process through which persons previously convicted of crimes as felonies, which would be misdemeanors under the new definitions in Proposition 47, may petition for resentencing. (See generally *People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108-1109.)

Specifically, section 1170.18, subdivision (f), provides: “A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under [Proposition 47] had [Proposition 47] been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.” If the defendant satisfies those criteria, “the court shall designate the felony offense or offenses as a misdemeanor.” (*Id.*, subd. (g).)

Standard of Review

When interpreting a voter initiative, “we apply the same principles that govern statutory construction.” (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) We first look “to the language of the statute, giving the words their ordinary meaning.” (*Ibid.*) We construe the statutory language “in the context of the statute as a whole and the overall statutory scheme.” (*Ibid.*) If the language is ambiguous, we look to “other indicia of the voters’ intent, particularly the analyses and arguments contained in the official ballot pamphlet.” (*Ibid.*)

Defendant Failed to Meet His Burden of Proof of Eligibility for Resentencing

As the petitioner, defendant bore the burden of establishing that he satisfied the criteria for relief. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879 (*Sherow*).) Defendant argues that *Sherow* was wrongly decided and urges this court not to follow it. However, *Sherow* squarely answered the question of who bears the burden of proof on a Proposition 47 petition. In that case, the defendant’s petition for resentencing of his second degree burglary convictions “gave virtually no information regarding [the defendant’s] eligibility for resentencing.” (*Sherow*, at p. 880.) The *Sherow* court cited the well-settled principle that a party ““has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting.”” (*Id.* at p. 879.) The court held that the petitioner had the burden of establishing eligibility for resentencing under Proposition 47. (*Sherow*, at p. 878.) Since the defendant in that case failed to do so, the court affirmed the trial court’s denial of his petition for resentencing. (*Id.* at pp. 880-881.) We agree with the analysis and holding of *Sherow*.

This court in *People v. Perkins* (2016) 244 Cal.App.4th 129, further explained the defendant’s burden: “The statute itself is silent as to who has the burden of establishing whether a petitioner is eligible for resentencing. However, Evidence Code section 500 provides, ‘[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.’ Because defendant is the petitioner seeking relief, and because Proposition 47 does not provide otherwise, ‘a petitioner for resentencing under Proposition 47 must establish his or her eligibility for such resentencing.’ [Citations.] In

a successful petition, the offender must set out a case for eligibility, stating and in some cases showing the offense of conviction has been reclassified as a misdemeanor and, where the offense of conviction is a theft crime reclassified based on the value of stolen property, showing the value of the property did not exceed \$950. [Citations.] The defendant must attach information or evidence necessary to enable the court to determine eligibility.” (*Id.* at pp. 136-137.) Thus, in *Perkins*, we held that when the defendant’s petition stated that the value of the property did not exceed \$950, but the defendant “did not indicate anywhere on the form the factual basis of his claim regarding the value of the stolen property,” he “did not provide the superior court with information that would allow the court to ‘determine whether the petitioner satisfies the criteria in subdivision (a).’ (§ 1170.18, subd. (b)),” and he failed to establish his eligibility for resentencing. (*Id.* at p. 137.)

As noted *ante*, defendant established by his plea only that he entered the bank with the intent to commit theft and/or a felony and that he unlawfully possessed a completed check with the intent to pass the check and defraud an individual and the bank, as alleged in counts 1 and 2. Thus, the plea did not establish that defendant entered a commercial building during regular business hours or that the value of the check was less than \$950. In his petition, defendant asserted that the value of the check was less than \$950, but he proffered no declaration or evidence to support that assertion. As the court stated in *Sherow, supra*, 239 Cal.App.4th at p. 880: “A proper petition could certainly contain at least [defendant’s] testimony about the nature of the items taken. If he made the initial

showing the court can take such action as appropriate to grant the petition or permit further factual determination.”

Like the defendants in *Sherow* and *Perkins*, defendant here did not satisfy his burden of proof, and the trial court therefore erred in granting his petition.

DISPOSITION

The order appealed from is reversed without prejudice to subsequent consideration of a properly filed petition. (*Sherow, supra*, 239 Cal.App.4th at p. 881.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.